UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE, INC., TIRES PRODUCTS LIABILITY LITIGATION	)	Master File No. IP 00-9373-C-B/S MDL No. 1373 (centralized before Hon. Sarah Evans Barker, Judge)
THIS ORDER RELATES TO:	)	
BARBARA JO NORTH, Individually, and as Guardian of Nicole Marie North, NICOLE MARIE NORTH, and STEVEN REED NORTH, Plaintiffs, v. BRIDGESTONE/FIRESTONE, INC., an Ohio Corporation, et al., Defendants.	)	Individual Case No. IP 01-5252-C-B/S

ENTRY GRANTING FIRESTONE'S MOTION FOR SUMMARY JUDGMENT

This entry addresses a summary judgment motion filed by Defendant Bridgestone/Firestone, Inc. ("Firestone") in a product liability/personal injury case pending in this Multidistrict Litigation. In support of its motion, Firestone contends that Plaintiffs have failed to offer any evidence tending to show that a tire defect caused the accident resulting in their injuries, that Plaintiffs' claims are barred by the applicable statute of limitations, and that Plaintiffs have failed to produce any factual support for their conspiracy claim against Firestone. For the reasons explained in detail below, we GRANT

Defendant Firestone's Motion for Summary Judgment. In addition, we DENY AS MOOT Firestone's Motion to Strike.

Factual Background

On April 12, 1993, Barbara North, along with her minor children Nicole and Steven North, was traveling eastbound on I-80 in her 1992 Ford Explorer, approximately 40 miles east of Wendover, Utah. Def's Statement of Material Facts ¶¶ 1, 2. On this date, Nicole and Steven North were ages 12 and 15 respectively. Id. ¶ 1.

Although the parties dispute the precise nature of Barbara North's driving maneuvers preceding the accident, they agree that she experienced some control difficulty with her vehicle and, as she attempted to correct for this difficulty, the Explorer flipped at least twice, ultimately coming to rest upright facing west roughly 40 feet from the lane in which it formerly traveled. Complaint ¶ 11. Following the accident, Plaintiffs allege that "[t]he Firestone tire on the left rear of the vehicle was flat and off the bead." Pl.'s Statement of Material Facts ¶ 8. Nicole and Steven were ejected from the vehicle, suffering serious injuries, and Barbara was injured as well. Id. ¶ 3; Pl.'s Statement of Material Facts ¶ 2. Barbara North testified in her deposition that she has no specific recollection of the accident, except that she fought to control the steering wheel. Def.'s Statement of Material Facts ¶ 4. Barbara North also testified that, when interviewed by an insurance claims adjustor weeks after the accident, she "remember[s] [the adjustor] asking [her] at least three

times, are you sure you didn't have a blow-out? Are you sure?" In response, she said "I don't know what happened. It's possible. I don't know." Id. ¶ 9.[1] Barbara North alleges that she did not become aware of any alleged defect in Firestone tires until September 2000, when she received a recall letter from Firestone. Pl.'s Statement of Material Facts ¶ 6.

Plaintiffs filed this action against Ford and Firestone, among others, on December 13, 2000, nearly eight years after the accident occurred. Id. ¶ 8. Plaintiffs brought claims for strict liability, negligence, and conspiracy seeking both compensatory and punitive damages. Id. Plaintiffs base their claims against Firestone on allegations that the tires manufactured by Firestone and used on the Ford Explorer driven by Barbara North at the time of the accident were defective and unreasonably dangerous. Id. ¶ 9. Barbara North was deposed in this matter on February 15, 2002. During her deposition, Barbara testified that at the time of the accident she was generally familiar with the possibility of vehicle rollover, particularly with regard to certain Jeep vehicles. Barbara North Depo. at 120-21. She also testified that at the time of the accident, she considered whether a tire failure or

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[1] Defendant offers the deposition testimony of Diane Peterson to support the assertion that "[t]here is evidence that North has informed people she fell asleep while driving the Explorer." Def.'s Statement of Material Facts ¶ 11. Plaintiffs object to such evidence on the ground that it constitutes hearsay. However, a close reading of Peterson's deposition testimony reveals that Peterson testified only as to the content of certain notes related to the North's insurance claim stemming from the accident, and that Peterson had no personal knowledge as to who wrote such notes or whether they reflect Barbara North's own statements or simply the independent judgments made by a liability adjuster. Although statements made by Barbara North may be admissible under an exception to the hearsay rule as statements of a party opponent, Peterson could not testify conclusively that the notations were direct quotes or even that she had actual knowledge of the source. Accordingly, this evidence must be excluded from our consideration of this Motion.

some other unspecified mechanical problem contributed to the accident. Id. at 155-56.

Standard of Review

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A genuine issue of material fact exists if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party on the particular issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Bellaver v. Quanex Corp., 200 F.3d 485, 492 (7th Cir. 2000) (citation omitted). The court must "construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. Liberty Lobby, Inc., 477 U.S. at 255; Del Raso v. U.S., 244 F.3d 567, 570 (7th Cir. 2001). However, the nonmovant "may not simply rest on his pleadings, but must demonstrate by specific evidence that there is a genuine issue of triable fact." Colip v. Clare, 26 F.3d 712, 714 (7th Cir. 1994) (citation omitted).

Legal Issues

1. Evidence of tire defect/causation

Firestone contends that summary judgment must be granted because Plaintiffs have provided no evidence from which a reasonable jury could conclude that any of the tires on the North's vehicle[2] experienced a design or manufacturing defect, or that any such defect caused the North's vehicle to roll over, and, therefore, that Plaintiffs cannot properly maintain a products liability or negligence action against Firestone. To recover on a claim for strict product liability against a manufacturer, a plaintiff must prove, among other things that the product was unreasonably dangerous due to a defect or defective condition and that the defective condition caused the plaintiff's injuries. Interwest Const. v. Palmer, 923 P.2d 1350, 1356 (Utah 1996), citing Lamb v. B & B Amusements Corp., 869 P.2d 926, 929 (Utah 1993). Similarly, to recover for negligence, a plaintiff must show that the defendant's breach of a duty was a proximate cause of the plaintiff's injuries. Palmer, 923 P.2d at 1356, citing Jackson v. Righter, 891 P.2d 1387, 1392 (Utah 1995). Utah law generally defines proximate cause as "'that cause which, in natural and continuous sequence, (unbroken by an efficient intervening cause), produces the injury and without which the result would not have occurred. It is the efficient cause--the one that necessarily sets in operation the factors that accomplish the injury.'" Mitchell v. Pearson Enterprises,

[2] Firestone also argues that Plaintiffs have not offered evidence to establish that the tires on their car at the time of the accident were, in fact, manufactured by Firestone. However, for the purposes of this Motion, Firestone concedes this point. Firestone's Memorandum in Supp. of Mot. for Summ. J. at 8, n.1.

697 P.2d 240, 246- 47 (Utah 1985), quoting State v. Lawson, 688 P.2d 479, 482 n.3 (Utah 1984). At least one Utah court of appeals decision has noted that, in the context of a products liability action, a plaintiff "must provide some evidence that a defect existed at the time he bought the [product] and that the defect caused his injury. It is not enough to merely contend that a defect existed, show that an accident occurred, and assume the two are necessarily related." Moreover, Utah law cautions that "'[w]hen the proximate cause of an injury is left to speculation, the claim fails as a matter of law.'" Mitchell, 697 P.2d at 246, quoting Staheli v. Farmers' Co-op. of Southern Utah, 655 P.2d 680, 684 (Utah 1982).

Here, Plaintiffs simply offer no evidence in response to Firestone's Motion for Summary Judgment tending to establish the existence of a defect in any of the tires on Plaintiffs' car or that any such defect was causally related to the accident that produced their injuries. The only assertions in Plaintiffs' Statement of Material Facts that even relate in any way to the alleged defect in the Firestone tires or Firestone's involvement in Plaintiffs' injuries are that, after the accident, "[t]he Firestone tire on the left rear of the vehicle was flat and off the bead," and "Barbara and Steven North did not become aware that there were defects in Firestone tires until September 2000." Pl.'s Statement of Material Facts ¶¶ 6, 8. Plaintiffs offer no factual evidence regarding the possible causes of the alleged flattened tire, nor any expert testimony tending to establish that tire failure contributed to the vehicle rollover. Because Plaintiffs have not provided an evidentiary basis from which reasonable jurors could conclude that a failure of the Firestone tires

caused the accident, but instead would force them to speculate as to the presence of a tire defect and its relationship, if any, to Plaintiffs' injuries, summary judgment is GRANTED in favor of Firestone.[3]

2. Conspiracy claim

Firestone moves for summary judgment on Plaintiffs' conspiracy claim on the ground that Plaintiffs have failed to produce any material facts tending to support such a claim. In order to maintain a cause of action for conspiracy under Utah law, a plaintiff must demonstrate "(1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." Waddoups v. Amalgamated Sugar Co., 54 P.3d 1054, 1064 (Utah 2002), quoting Israel Pagan Estate v. Cannon, 746 P.2d 785, 790 (Utah Ct. App. 1987) (citations omitted).

Plaintiffs again have not provided sufficient support for the conspiracy claim against Firestone to fend off this motion for summary judgment. Indeed, nowhere in their memorandum in opposition do Plaintiffs address the substantive elements of the conspiracy claim or marshal any material facts to establish these elements. Given this lack

[3] Because we find that summary judgment is properly granted as to Plaintiffs' negligence and products liability claims based on Plaintiffs' failure to provide evidence of causation, we need not consider whether such claims are barred by the applicable statutes of limitations. Firestone does not explicitly contend that Plaintiffs' other claims are barred by a statute of limitations, and so we do not consider such arguments.

of evidentiary support, a jury would simply have no basis upon which to find in Plaintiffs' favor on this claim. Accordingly, summary judgment is GRANTED with respect to the conspiracy claim against Firestone.

Conclusion

Firestone moved for summary judgment as to Plaintiffs' products liability, negligence, and conspiracy claims. For the reasons set forth in detail above, we find that 1) Plaintiffs have not offered evidence tending to establish that a tire defect was present in the Firestone tires on the Norths' Ford Explorer or that such a defect caused the accident in which Plaintiffs were injured, and, thus, have not offered evidence from which a reasonable jury could find in their favor on either a products liability or negligence claim, and 2) Plaintiffs have not offered evidence from which a jury could reasonably conclude that Firestone engaged in a conspiracy with Ford regarding the alleged tire and automobile defects. Accordingly, Firestone's Motion for Summary Judgment is GRANTED.

It is so ORDERED this _____ day of November, 2002.

SARAH EVANS BARKER, JUDGE
United States District Court

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